19.42 **File No.** O. Inam / 42

Legal **DEPARTMENT**

A **BRANCH**

Subject: Opinions regarding granting of Inams and Jahagirs

125/-

File No. O. Inam / 42

Std. Sectt. Slip 24 B e.

C O N T E N T S

Legal Department File O/ Inam 1943

Serial No.	Compilation No.	Subject	Page.
1	2	3	4
		O. Inam Opinions 1942, regarding grantity of Inams and Jaghire	
1.	G.O. 1017 4.2.1942	Up Keep of the Dargah Dair at Perundu— Send to Khosinbal Esq. Fairwished in form B instead of in form C	1-2
2.	G.R. R.D. No. 8613/28 23.4.1942	Settlement Inam Village introduction of original & revision	3-4
3.	G.O. No.4460 30-5-1942	Power to forfeit and to regrant No. Inam vests in Govt.	5-6
4.	G.O. No. 6122 23-7-1942	Sec. 16 of Act, II of 1863 Sec. 32 of Act, VII of 1863 Interpretation of the words "Lands for Service" charged holdings	7-8
5.	G.O. 8086 10-12-1942	Record of rights distribution of the revenue of the Village in proportion to the shares held by each shareholder	9-
6.	G.O. 10250 24-12-1942	Sec. 4 of the Exemptions from land Revenue Act, 1862. whether request by Mrs. Jenibai for application of summary settlement & enfranchisement of Inam Village on payment of annual nuzzera legal.	11-12
7.	G.R. R.D. No. 8080/28 11-2-1943	Inam Village Application of Summary settlement to	13-14
8.	G.O. 1556 [illegible]-2-1943	Inam Village Ahmedabad claim of [illegible] Inam right of [illegible] village	10-26 15-17
9.	G.O. 10364 30.12.1942	Inam village Ahmedabad claim of inamdar to grant rights in forest.	10-26

10.1 E.R. R.D. No.6669/39 ------do------
15-1-1943. (confl.) Ahmadgadh Taluka
Nagar 27-30

K.S.R.
7/5

Office of the H.L.A.

It appears from the Jamabandi Tharav for the year 1891, the Inam Patras of 1856-57 at pages 9 and 23 respectively of the Collector's File No.III, the entry in column 4 of the Land Alienation Register of 1887-88 and the extract of the village Form No.3 of ~~1947~~ 1917 at pages 6 and 45 respectively of the Collector's File No.I that the Survey Nos. 130,137,149,160 and 169 in the alienated village of Kandar in Karmala Taluka, District Sholapur constitute and endowment property for the upkeep of the Dargah Pir at Paranda; but unfortunately it appears that a sanad was granted to Late Fakirsaheb and Shekha Abdulla Vahabasaheb vide Shekha Isabsaheb in a form in Appendix B to Joglekar's Land Alienation Manual appropirate to a grant in class II i.e. a personal Inam (see the sanad at pages 55 to 58 in the Collector's File No.1) instead of a form in Appendix C relating to the Devasthan Inam, If the Inam had really been settled as a personal Inam under the Bombay Act No.II of 1863 a fixed annual payment as nazarana in commutation of all claims of Government in respect of succession and transfer calculated at the rate of one anna for each rupee of assessment in addition to quit rent equal to one anna for each rupee of assessment fourth of the assesment would have been levied (See section 2 of Bom. Act, 1863 and the rules thereunder). The sanad issued in the present case provides only for payment of a quit rent to one fourth of the assessment, which is a clear indication that the Inam must have been settled under section 8, clause 2nd of Act II of 1863. Tha nature of the Inam has never since been disputed . In these circumstances it is clear that it is a Devasthan Inam under class II and by mistake a sanad in a Form in Appendix B to Joglekar's Land Alienation Manual has been —

issued. If the grantees of the sanad have no objection to rescinding the sanad and granting one in Form III in Appendix C to Joglekar's Land Alienation Manual, there would be no legal objection to doing so and the question whether or not the mistake was mutual would be irrelevant.

2. It is no doubt true that although the sanad was issued in this case in favour of Rumanbi and Shaik Abdulla Kababsaheb the endowment property seems to have been in the management of the Inamdar, Patil Kulkarni of the village of Nandar (See Jamabandi Tharav of 1884 and Inam Patrak of 1886-87 at pages 8 and 23 respectively of the Collector's File III and the extract of the village Form No.III at page 48 of the Collectors File I) But since the Patil and Kulkarni are not the persons to who the sanad has been issued, the consent or otherwise of these persons to the cancellation of the sanad would be irrelevant. Consequently the opposition of Pandu Abaji Kale the holder of 0-2-0 share in the Patil watan could afford no legal impediment to revoking the sanad and issuing another in proper Form. The Commissioner's proposal is free from legal objection.

Sd/- P.N.Modi 3/2

Remembrancer of Legal Affairs

U.O. to R.D. No. 1017 dated the 4th February 1942

Settlements
Inam Villages
Introduction of original and revision

GOVERNMENT OF BOMBAY
REVENUE DEPARTMENT.
Resolution No.8613/28
Bombay castle, 20th April, 1942.

Memorial, dated 23rd August, 1941, from the President, Sardars' and Inamdars' Central Association-Stating the the orders of Government advising the holders of unsettled inam villages to agree to the introduction of original settlement in their villages, at their own cost, simultaneously with the settlements of the talukas in which the inam villages are situated, are unfair to inamdars concerned; making remarks; and requesting that those orders may be reconsidered.

Memorial, dated 8th September 1941, from Sardar V.N. Mutalik-Stating that the decision of the Government to postpone the revision settlement of his inam villages of Shirol and Kurkool in the Satara district till the settlement of the talukas in which they are situated are due under the revised provisions of the Land Revenue Code 1939 is unfavourable to him; that the decision infringes the agreement executed by him under and the provision of the Land Revenue Code, as they stood before the Amending Act of 1939 and that revision settlement in his villages may be introduced according to the old provisions of the Code; making remarks; and requesting that the decision may be reconsidered.

RESOLUTION- The questions raised in the memorials are-

(1) that as Government undertook to introduce surv settlements, either original or revision, in certain i villages according to the agreements executed by inamd several years ago, this undertaking should be implement in terms of the old Land Revenue Code, under which th

agreement
~~agreement~~
agreements were excuted and not of the Code as amended in 1939;

(2)
(2) that the cost of survey and settlements of inam villages should as heretofore be borne by Government and not by the inamdars.

2. As regards the first question, Government is advised that it is legally impossible for it to implement the undertaking impliedly given by it for the introduction of original and revision settlements in those inam villages the holders of which executed agreements in terms of the old Code, since (1) the old provisionsof the Code relating to settlements have been repeated by the Amending Act of 1939, (2) the agreements executed by the inamdars under section 216, Land Revenue Code, as it stood prior to its amendment in 1939 cannot now be implemented, and (3) settlements can be introduced in inam villages only in accordance with the law asit stands at present, I.E. in accordance with the provisons of Chapter VIII A Government is therefore of the opinion that if an inamdar who executed an agreement under the provisions or section 216 Land Revenue Code, before its amendment in 1939, wished his village to be settled or resettled he should make a fresh application to the Commissioner asking for the extension of Chapter VIII-A of the Code to his village and excuted the necessary agreement. Government will then take steps for the introduction of settlement in the village in accordance with the revised provisions of the Code. Government has also decided that settlement operations in the inam villages should be undertaken at its cost if the inamdar makes a fresh application and if he is entitled, according to the terms of the old agreement, to the introduc ion of original or revision settlement at the cost of Government

3. Government has decided to postpone revision settlement work till the end of the war.(Government Resolution, Revenue Department, No 1016/30, dated 22nd April, 1942) The work of original and revision settlements in Inam villages should be taken up in accordance with the orders in paragraph 2 above when previous settlements such as mentioned after the end of the war.

4. In regard to the second question mentioned in para paragraph 1, Government has come to the conclusion that the orders issued in Government Resolution, No.8613/28, dated 12th May,1942, need not be reconsidered.

By order of the Governor of Bombay

Sd/- M.J. Desai

Secretary to Government

F.N. No. 8613/28, R.D., Dated the 20th April 1942.

To,

The Commissioners of Divisions,

All Collectors,

The Settlement Commissioner and Director of Land Records,

The Secretariat of Legal Affairs,

The President, Sardars and Inamdars, Central Association (by letter)

Sardar V.N. Mahajik (by letter)

No. of 1942

5

Office of the R.L.A.

Where a cased by way a summary settlement of land revenue has been granted by Government under Bombay Act VII of 1863 Government cannot reform or set it aside; to do so would be an assumption on the part of Government of the function of a civil court (Dolaning Bhonsing vs. Collector of Kaira I.L.R.4 Bom 367). A settlement made under Act VII of 1863 is an agreement effected and is subject to ordinary rules applicable to contracts (See Secretary of State vs. Jesingbhai I.L.R.17Bom.407). It appears that the Godhari Inams are settled under Bombay Act VII of 1863 and sanads in Form No.76 in Appendix B to Jogleker's Land Alienation Manual are issued (see P.25 and p.213 of Jogleker's Land Alienation Manual.) Under condition (d) of the sanad the power to forfeit and to resume the Inam vests in Government. There is no provision in the sanad empowering Government to delegate this power o any of its servants and to do so in the absence of any such provision in the sanad would be to interfere with the terms and conditionsof the settlement, which without the cosent of the other party to the ~~agreement would be unwarranted~~ o agreement would be unwarranted. Consequently nothing short of ligislation would make it legally feasible to delegate the power of Government under the ~~sand~~ Sanad, to the Collectors.

Sd/- 29/5

Remembrancer of Legal Affairs

U.R. to R.D., No. 4460, dated the 30th May 1942

In considering how the various alienated holdings were settled and what is the law applicable to them the Bombay Presidency falls into two divisions, namely the old and the new provinces. The old province means Guzerat and Konkan and the new province included Khandesh, the the Deccan and Southern Maratha country. Different laws were passed for these different provinces and even now they are governed by different law as regards alienated holdings. The old province is referred to as districts not subject to operation of Act XI of 1852 and the new province is referred to as the districts subject to Act XI of 1852. Act VII of 1863 applies to the old province while Act IX of 1852 and Act II of 1863 apply to the new province. "Land for service" as defined in Section 16 of Act II of 1863 and Section 32 of Act VII of 1863 shall include lands specially granted or held or continued nominally for the performance of service, whether that service be actually performed or not, and land granted, held or continued partly in consideration of past service and partly for performance of prospective service but shall not include lands in consideration of past service only; and it is to be understood that Government shall be competent to determine any question that may arise in giving effect to these Acts as to whether or not any lands are held for service. Lands held for service are excluded from settlement under Act II of 1863 (see clause 2nd of section 4 of Act II of 1866 1863). Under clause 3rd of section 2 of Act VII of 1863 lands held for service shall be resumable or continuable under such general rules as Government

may think proper from time to time Act II of 1863 does not enact a similar rule making power as regards resumption and continuance of such lands by Government. The effect is that such lands are excluded from settlement under Act II of 1863. But this Act applies to those territories which are subject to Act XI of 1852 Act XI of 1852 is still in force in those territories. Therefore lands held for service though excluded from settlement under Act II of 1863 are still governed by Act XI of 1852. Rule 8 of that Act makes lands held for service subject to adjudication under the Act Except those held for service to the State. Gadkaris were fort-keepers who enjoyed village lands for their services. Obviously therefore the lands enjoyed by Gadkaris were "Lands held for service" and consequently Gadkari inams in the old province are settled under powers vested in Government by virtue of clause 3rd of section 2 of Act VII of 1863 while those in the new province are settled under rule 8 of Schedule B of Act XI of 1852.

3. It appears from the Commissioner's letter at p.15 ante that the present case relates to a Gadkari Inam in the Satara District i.e. a district in the new province. Consequently the Inam would be deemed to have been settled under rule 8 of Schedule B of Act XI of 1852. This does not make any difference as to who should exercise the power of resumption under the terms of the sanad and the legal position state in the R.L.A.'s opinion No 4460, dated the 28th May 1942 would remain the same

Id/- P.N.M.
27/7

Remembancer of Legal Affairs.

U.R. to the R.D, No 6122 dated the 28th July 1942

It appears that of the five Bandidars Rao Saheb A.N. Kalyani and D.D.Patankar object to the distribution of the net revenue of the village according to the shares recorded in the Record of Rights. Their main contention appears to be that the distrubution of the revenue of the village is regulated according to the time honoured custom which has been upheld by the civil courts more than once and according to which they are entitled to more than what they would otherwise get according to the shares entered in the Record of Rights. Government was not a party to the previous litigation and could not be bound by the decrees, if any of the civil court recognising the customary distribution of the revenue of the village. The shareshave not taken any steps to get the entries in the Record of Rights rectified and these entries are presumed to be correct until the contrary is proved. (See section 135.j. of the Land Revenue Code). There appears therefore no legal objection to distributing the revenue of the village in future in proportion to the share held by each share-holder as entered in the Record of Rights (see Articles 176 at page 144 of Joglekar's Land Alienation Manual).

2. Rao Saheb Kalyani and Messrs. D.D. Patankar and Y.D. Patankar are opposed to making adjustments in respect of past payments from future payments. It is true that only the past three years' dues require adjustment, as the persons underpaid cannot maintain a suit for any claim higher than that (see Article 173 ibid). Any such adjustment is however likely to involve Government into litigation. It is also doubtful whether it would be legal

possible for Government t do the adjustment against the person overpaid by mistake when the mistake was one of fact and could be easily detected. Government may therefore leave it to the parties to seek their remedy in court in this connection.

EB- id PNM 19/2

Remembrancer of Legal Affairs,.

U.R. to R.D., No 9886 dated the 10th December 1942

Office of the R.L.A.

The alienated village of Cotardi in Khed Taluka, Poona, District was adjudicated by the Assistant Commissioner on 13.10.1837 as a personal inam continuable "so long as there shall be in existence any male heir by male issue of the body of Gopinath Dixit dec." The village was purchased in 1939 at a Court sale by Mrs Janibai Keshinath Pable Kotekar who has requested Government for the application of the Summary Settlement and the enfranchisement of the inam village on payment of annual peshkash under section 4 of the Exemptions from Land-revenue Act, 1863. The question for consideration of the R.L.A. is whether there is any legal objection to complying with the request of Mrs. Janibai.

2. Section 4 of the Exemptions from Land-revenue Act, 1863 provides that lands held partially or wholly exempt from the payment of land revenue, and already formally adjudicated to be so continuable hereditarily in perpetuity may, at the option of the holder, be henceforth recognised, so far as the rights of the Provincial Government are concerned, as the heritable and also the transferable property, not only of the actual descendants inheritance may have been limited by the terms of the said adjudication, but also of all his legal successors by inheritance, including heirs by collateral succession and heirs by adoption, and their assigns and thereafter the right of the provincial Government of its officers to question the title to possession, or to exemption from the payment of land revenue, of an holder of the said land already so adjudicated to be heritable in perpetuity on the ground that he does not belong to the

the family to which title is restricted by the adjudication, is hereby abrogated; and in any case of recognition lands already adjudicated to be heritable and to which such recognition applies are henceforth to be held subject to the payment of an annual nazana; provide, however, that the assent of the holder of all lands adjudicated as aforesaid to the acceptance of such recoganition and the payment of such nazarana shall be assumed, unless such holder shall within theree months from the date on which this Act comes into operation, decline to accept such recognition as aforesaid by a notice given in writing to the Collector of the district.

It is clear from the provisions of this section that Government can settle inams already adjudicated to be continuable hereditarily in perpetuity by recognising them as enfranchised private property if the holder undertakes to pay annual nazrana. The proviso to this section lays down that the assent of the holder to the acceptance of such recognition by Government and payment of nazarana is to be assumed unless the holder has declined to accept such recognition by a notice in writing within three months from the date on which the Act came into force. Since in the present case, the inam has not yet been summarily settled, it is obvious that the original holder must have declined the offer of recognition in 1863. The non-acceptance of such recognition, however, would not debar Government from considering the offer now made by the present holder. There is nothing in section 4 precluding the application for enfranchisement by mutual consent of the parties at any time even though the privilege of accepting recognition was formerly declined within three months of the Act coming into force. Consequently, there is no legal objection to granting the

request of Mrs. Jenkins. The view taken by the Commissioner, C.D., in his letter at page 187 ante is correct.

S.G. P N. Moos
23/12/

Remembrancer of Legal Affairs.

D.R. to R.D., 10050 , dated the 26th December 1942

Inam Villages.
Application of Summary
settlement to——

GOVERNMENT OF BOMBAY

REVENUE DEPARTMENT.
Resolution No.0690/25

Bombay Castle, 11th February,1943

Petition, dated 20th August 1942, from Mrs. Jamkibai Kashinath Pohle-Patelin, requesting that Summary settlement may be applied to inam village of Sakurdi, taluka Khed, district Poona.

Government memorandum, No 0690-F/28, dated the 15th September 1942, to the Commissioner, C.D.

Letter from the Commissioner C.D., No L.N.D. 1/222, dated the 22nd October 1942:-

5. Mrs. Jamkibai in her present petition to Government has renewed her request for the application of the Summary Settlement to her village on payment of annual nazarana at the prescribed rate. She states that her case is on all fours with that of Koliyo village in Khed Taluka which was held on similar tenure and to which the Summary Settlement had been extended under Government Resolution, Revenue Department, No 3947 of November 28th, 1931.

6. The extension of the Summary Settlement was refused to village in question on the grounds that the Inamdar had in the past presumably declined to accept the offer made under Section 4 Act of II of 1863, and having once declined it, it was not open to him to take advantage of the terms offered in 1863 unless this argument amounts to saying that the terms offered under section 4 of Act II of 1863 were closed after the period of three months allowed by the

Section and that the offer was not perpetually open. This interpretation seems to be of doubtful vilidity. Section 4 of Act II of 1863 simply provides that the Summary Settlement was not to be extended to those lands the holders of which had specifically declined to accept the terms within a period of three months from the date of the Act coming into force. It does not state that having once declined to accept the terms of settlement it was not open to such holder to accept it at a subsequent date. It is true that the Section does not expressly state that the offer was perpetually open but it is equally true that it does not prohibit its application later on. As pointed out by the Collector of Poona in paragraph 4 of his letter No. S.R. 101/219 of June 24th 1921, printed in the preamble of Government Resolution, No 3047 of November 28th, 1921 there appears to be no bar of time against the use of Section 4 of Act II of 1863 nor does it appear that the refusal to make use of it at any one time in the past operates as a waiver". The extension of the Summary Settlement to the villages of Shendani (Khandesh District), and Koliye and Hinjawadi in Poona District though the holders thereof had declined to accept the settlement in 1863 indicate that Government were in agreement with the above view expressed by the Collector of Poona in 1921. This fact considered with the fact that there is nothing in Section 4 of Act II of 1863 to suggest that the option exercised within the period allowed by it was final militate against the view (held by the Commissioner in 1928), that the offer made in 1863 was not perpetually open. It is desirable that the case now in question should be treated on the same lines as those of the villages of Koliye, Hinjawadi, etc., or that a uniform policy should in any case be followed. There appears no objection to the Summary Settlement being applied to the village now in question subject to the payment by the holder of an annual nazarana at one per rupee of the assessment.

Government reference to the Remembrancer of Legal Affairs, dated the 14th November 1942.

Memorandum from the Remembrancer of Legal Affairs No. 10450, dated the 26th December 1942.

"The alienated village of Gokurdi in Khed Taluka, Poona District, was adjudicated by the Assistant Inam Commissioner on 18th October 1957 as a personal inam continuable "so long as there shall be in existence any male heir by male lineage of the body of Gopinath Dixit Gha". The village was purchased in 1930 at a Court-sale by Bro. Annibai Keshinath Pable. Meteor she has requested Government for the application of the Summary Settlement and the enfranchisement of the inam village on payment of annual nazarana under section 4 of the Exemptions from Land Revenue Act, 1863. The question for consideration of the Remembrancer of Legal Affairs is whether there is any legal objection to complying with the request of Bro. Annibai.

3. Section 4 of the Exemptions from Land Revenue Act, 1863 provides that Lands held partially or wholly exempt from the payment of land revenue, and hereditarily adjudicated to be so continuable hereditarily in perpetuity, may, at the option of the holder, be henceforth recognised, so far as the right of the Provincial Government are concerned, as the heritable and also the transferable property, not only of the actual descendants of the person to whose descendants inheritance may have been limited by the terms of the said adjudication, but also of all his legal successors by inheritance, including heirs by collateral succession

and heirs by adoption, and their assigns; and thereafter the right of the Provincial Government of its officers to question the title to possession, or to exemption from the payment of landrevenue, of any holder of the said land already so adjudicated to be heritable in perpetuity on the ground that he does not belong to the family to which title is restricted by the adjudication, is hereby abrogated; and any case of recognition lands already adjudicated to be heritable and to which such recognition applies are henceforth to be held subject to the payment of an annual nazarana; provided, however, that the assent of the holder of all lands adjudicated as aforesaid to the acceptance of such recognition and the payment of such nazarana shall be assumed, unless such holder shall within three months from the date on which this Act comes into operation, decline to accept such recognition as aforesaid by a notice given in writing to the Collector of the district."

3. It is clear from the provisions of this section that Government can settle inams already adjudicated to be continuable hereditarily in perpetuity by recognising them as enfranchised private property if the holder undertakes to pay annual nazarana. The proviso to this section lays down that the assent of the holder to the acceptance of such recognition by Government and payment of nazarana is to be assumed unless the holder has declined to accept such regognition by a notice in writing within three months from the date on which the Act came into force. Since, in the present case, the inam has not yet been summarily settled. It is obvious that the original holde must have declined the offer of recognition in 1863. The non-acceptance of such recognition, however, would not debar Government from considering the offer now made by the present

Bombay. There is nothing in section 4 precluding the application for enfranchisement by mutual consent of the parties at any time even though the privilege of exercising recognition was formally declined within three months of the Act coming into force. Consequently there is no legal objection to granting the request of the Collector, C.D., as requested.

RESOLVED:- Government accepts the opinion of the Remembrancer of Legal Affairs copies of which should be forwarded to the officers concerned for information and guidance.

2. Government is pleased to direct that the survey settlement should be applied to the Inam village of Sawadi, taluka Khed, district Poona on payment of an annual assessment of one anna per rupee of the assessment.

3. The Petitioner should be referred to the Commissioner, C.D., for a reply to her petition.

By order of the Governor of Bombay.
Sd/- M.J. Desai.
Secretary to Government.

G.D. No 6899/23 B.D., dated the 11th February, 1943.

To,
The Commissioners of Divisions,
All Collectors,
The Settlement Commissioner and Director of Land Records,
The Remembrancer of Legal Affairs,
The Finance Department,
The Petitioner (by letter)
The Accountant General,

EVT-4

I appears from the Adaya Patra issued by the Peshwa in 865 and the decree of the Inam Commission detailing the whole history of the grant at pp.7 and 8 ante respectively that the grant in this case is neither a grant of land nor of the whole revenue of the village but merely a grant of an Atal i.e. a share of revenue(see J Gokhale's Land Alienation Manual p.6) In other words the village of Nandgaon is a Shirsati Inam village the revenue of which is divided between Government and the Inamdar in the proportion of 1/3 and 2/3. In Gangadhar vs. Collector of Thana (29 B.L.R. 909) which related to the revenue of kuran lands in a Shirsati Inam village Fawcett J. observed as follows:-

" In the ordinary case here there is an Inamdar who has Inam rights over a village, it has been frequently held that he has a right to disposs of the unvultivated land and if he gets an extra revenue from that source, he is entitled to appropriate it, while Government in fact, can only recover the authorised revenue. But in applying that particular rule to the case of a Shirsati Konkan village such as this is it is to be remembered that the grantee is not the sole Inamdar. Practically he shares the inam rights with Government and the case is not on the same footing as if this was an ordinary village. If this were an ordinary Inam village it might legitimately be contended that in any case Government could not recover more than the assessment fixed on those lands. The lands are shown in village form No.1. as "Government waste land". That of course is not a description which can be said to bin

the plaintiff. But the form also shows some other facts which are useful, The total area of S.No. 103 is 29 acres and 25 gunthas. Out of that 6 acres and some gunthas have been assessed as cultivable land and the remaining area is shown as uncultivable and unassessed. Similarly in the case of S.No. 106 the total area is 25 acres and 37 gunthas of which 11 acres and 21 gunthas are assessed as cultivable land at the sum of Rs. 6-4-0 and the rest of the land is shown as uncultivable and unassessed land. Therefore, there has been in these particular numbers, a clear demarcation of the cultivable from the uncultivable land; and it is the revenue ~~from~~ from the latter with which we are concerned. In the present case Government are no doubt entitled only to assessment in regard to the particular portions of the land on which that assessment has been fixed. But I do not think that Government's right under the Inam Commissioner's adjudication is restricted only to that assessment seeing that ther are specified portions of land on which the assessment was not in fact fixed and in respect of which this extra revenue is obtained. This extra revenue is in fact part of the land revenue of the village. It is all along so shown in the Tharav bunds and there is no case for saying that the adjudication does not cover that particular revenue". In the same case Patkar J. observed as follows:- "The fact that the lands are not entered in the name of the Inamdar in the revenue records may not be conclusive proof of any absence of right in him, but it raises the presumption that the plaintiff is not entitled to these lands otherwise than as an Inamdar of the village".

In view of the aforesaid observations it appears that the case requires further investigation on the lines indicated therein. It is true that according to the decision of the Assistant Commissioner at p.12 ante the grant in this case is a grant of 2/3 of the net revenue of the village; but it is not known whether the revenue of the village related to the assessment only or assessment and revenue derived from the unassessed lands. The Revenue Department is therefore requested to direct a further investigation in the matter as stated above and to forward to this office the report of such inquiry and extracts from village Form I relating to the forest lands, copies of Thoomy lands and other papers relating to instances, if any, where the Inamdar has enjoyed the proprietary rights in the village without allowing Government any share in the revenues (not assessment) of lands in the village."

Sd/ P.N.Moos.

18/2

Secretariat of Legal Affairs.

U.R. to the R.D.,No. 15156 dated the 19th February 1942

IN/7/4

Office of the H.L.A.

It appears that the village of Agalgam is part of an Inam granted in 1756 by Ahmmer Fadhah for the upkeep of the shrine of Alamgir at Ahmednagar and was in consideration of one Rajo Syad Ramzanbeen Wallad Rajo Syad Mahmud Saheb at the introduction of the British Government. At the nationalisation of the Inam the village including of ancient Huts and Inams, the Sardeshmukh Min Pokhara Patels and Panchashtal Avals, Min Pathar and Kamar Mahmad was shown as hereditary Inam, but it was found that the village was entered in the shitas etc. of the Government for 1920/21 as "Patasthan" (Partially alienated) Inam village of "Kula Pardar of the Surat" of the Shitas). The Inam Commissioner after going through all the evidence produced by the holder decided in 1953 under Act XX of 1852 Schedule B Rule 2 that the Watan Deal of Agalgam calculated at 2/3rds of the net income of the village should be continued as Inam as long as there was in existence any male heir in male lines of the body of the original grantee Hadha Abdola Wallad Ayaz Yamin , and also, though originally a devasthan Inam, was through oversight supposed to be a personal Inam now it appears that this mistake was brought to the notice of Government three years Government should the formal decision in the following terms:-

Where by Inam commission the decisions passed in the y
1858 the following property, viz.

I The village of Nagar Deolee.

II. The village of Agedgaon

III. A cash Amal from the revenues of Monze Khandkee

Iv A cash Amal from the revenues of Monza Mahaikree

V. A cash Amal from the revenues of Monza Kaorgaon

was under a misapprehension of the terms of sanas of A D 1754 declared to be contunuable under Rule 2, Schedule B of Act XI fo 1852 so long as there might be in existence any male heir in male lineage of the body of Syud Hashim Abdoola; and whereas by virtue of the payments of stipulated one anna Nazzerana under the provisions of Act II of 1863 for an extension of title that individuals great grandson was effected the conversion of this property into absolute free hold of the famoly; and whereas by actual terms of the sanad of A.D. 1754 the property aforesaid is the inalienable endowment of the shrine etc---; whereas the dicisons passed in 1858 by the Inam Commission are now amended and wh le the holdings aforesaid are declared to be the endowment of the Durgah etc." (See the Alienation Settlement Officer's letter underlying Government Resolution (Revenue Department) No. 1860, dated 13-5-1868.) According to the decision of the Inam Commissioner in 1858

it was a grant of the ~~whole~~ Assk of the village of Agadgaon calculated at 2/3rds of the net revenue of ~~the Government Portion of the~~ village and it is not known how in the Government Resolution of 1868 it came to be described as a grant of the village.

It appears that in 1887 a question arose about the forest rights in the village and the Remembrancer of Legal Affairs who was consulted in the matter opined "The final order of Government Resolution No. 1868 dated 13-5-1868 under the provisions of Act XI of 1852 was that the two villages in question (one of them being Agadgaon) and certain Aseig from three other villages should be declared t the permanent endowment of the Durgah of Ahmednagar. This decision must I think be accepted as an adjudication of all proprietary rights in the two villages, free from any exception. The forest rights in the village must therefore vest in my opinion in the shrine". By Government Resolution (Revenue Department No. 3020, dated 14th-5-1887 the Remembrancer of Legal Affairs opinion was forwarded to the Conservator of Forests, N.C., the Collector of Ahmednagar and the Forest Settlement Officer, Ahmednagar for information and guidance.

In July 1901 the Director of Military Farms requested the Collector of Ahmednagar for the transfer of Karan (Out of S.No. 20) at Agadgaon to his department. On the report of the Mamlatdar that the Karan belonged to Government the Karan was transferred to the Military department in 1906.

The formal sanction of Government was obtained in 1913 (vide G.R. No. 6, dated 2-1-1913). Since then

an area measuring 46-22 is leased out annually to the Military Department and the rent realised is being credited to Government. The Inamadar has now raised an objection to the leasing out of the Kuran and requests that the land be restored to his possession on the ground that the Kuran belongs to him. In his letter at p 1 ante the Commissioner C.D. observs: "As the forest rights are declared to be vesting in the Inamdar according to the orders in G.R. No. 3020, dated 14-5-1887 the request of the Inamdar seems apparently just and reasonable. But an examination of the original sanads, the decision of the Inam Commissioner and the orders in Government Resolution 1860, dated 13-5-2868 on which the opinion of the Remembrancer of Legal Affairs and the consequent orders of Government in Government Resolution No.3020, dated 14-5-1887 (conceding the forest rights to the Inamdar) have been based reveals that the opinion of the Remembrancer of Legal Affairs and the consequent orders in Government Resolution of 1887 were clearly based on a wrong premise. According to the sanad issued in 1763-64 by the Peshwas the Amal i.e. the revenue of the village of Agadgaon and four other villages was granted. In the decision passed by the Inam Commissioner under Act XI of 1852 it has been clearly stated that 'the Jagir Amal of Agadgaon in the Ahmednagar Taluka calculate at 2/3rds of the net revenue of the village' was continued to the Inamdar. The decision allowed the continuance of the village so long as there

was in existence a male heir in the male lineage of the original grantee. This decision was amended by Government Resolution No. 1860, dated 13.5.1868. The orders in this Government Resolution effected only the duration of the Inam and did not affect the nature of the grant which according to the original grant and the decision of the Inam Commissioner was one of 'Mal' i.e. service and not of the soil, the Remembrancer of Legal Affairs recommended the conversion of feint rights to the Inamdar clearly on the erroneous understanding that the Government Resolution of 1868 declared the two villages of Agadgaon and Nagartale to be permanently continuous to the Inamdar".

The questions raised for the consideration of the Remembrancer of Legal Affairs are :-

(1) whether the Remembrancer of Legal Affairs' opinion of 1937 was wrong and

(2) whether the orders in Government Resolution of 1937 can not be rescinded to the detriment of the Inamdar after being in force for over 50 years.

Under rule 2 of Schedule A to Act XI of 1852 the proceedings of the Inam Commissioner were subject only to modification, reversal or annulment by the Governor of Bombay in Council whose orders in every case were declared to be final. This implies the finality of the Inam Commissioner's order in so far as it is not modified etc. by Govt. (34 Bom. 232; B 909). In the present case the order of the Inam Commissioner passed in 1859 was that the Sagir Arg of the village of Agadgaon calculated at 2/3rds of the net revenue of the village should be continued. The inam being a Devasthan Inam, the order should have been passed by the

Commissioner under rule 7 of Schedule B to the Act XI of 1852; but the nature of the Inam escaped the notice of the Inam Commissioner and consequently is was adjudged by him as a personal Inam. This decision was ultimately revised by Government in 1868 and that order is no doubt final. It appears from the papers underlying that order of 1887 that what was in issue then was the nature of the grant i.e. whether it was a Devasthan Inam or a personal Inam as decreed by the Inam Commissioner. The question whether it was a grant or a village of Agadgaon of only of an 'Amal' was not at all in issue. Curiously enough the Inam Commissioner's letter underlying the Government Res Resolution of 1868 recited that the Inam adjudicated upon comprised the Village of Agadgaon as part of the proporities. It is not known why and how the village of Agadgaon istead of the Amal of the village came to be mentioned in that letter of the Inam Commissioner Obviously it was a mistake committed through oversight and it was not noticed by Government since the emendment of the order of the Inam Commissioner passed in 1858 was limited to the class or kind of inam. "When the question is entirely one of construction of an agreement it can only be properly answered after consideration of all the surrounding circumstances, the position of the parties to the agreement, its subject matter and the apparent purpose and object thereof and in particular of the provisions to be construed "(Laffer vs. Gillen 107 I.C.347 P.C.). The court ministering equitable principles, permits mistake to proved when it is common, that is where the expression f contract is contrary to the concurrent intention

of the parties. If such mistake is proved then the the Court can give the relief of rectification, but what is rectified is not the agreement but the mistaken expression of it.' (Sarkar's Evidence Act, p. 731). The Government Resolution of 1868 was passed amending the Government Resolution of 1858. These two Government Resolutions have to be read together to ascertain whether it was a grant of the village of Agadgaon or merely an 'Inam' of that village. The operative part of the Government Resolution of 1868 relates to the grant being a Devasthan instead of personal as was originally decided by the Inam Commissioner in 1858 and to that extent it amends the Government Resolution of 1858. Consequently that is binding on Government is the Government Resolution of 1868. As amended by the Govt. resolution of 1868. It is only the inoperative part, namely the preamble of the Government Resolution of 1868 that contains a recital about the village of Agadgaon having been decreed by the Inam Commissioner in the year 1858 etc., recital which is clearly one of fact to be verified by reference to the Inam Commission's decree itself. Such recital in the inoperative part of the Government Resolution could not have the effect of amending the decree of the Inam Commission on the question of the nature and quantum of grant. Moreover in spite of the preamble of the Government Resolution of 1868 the village of Agadgaon has all along been treated as a charitable village and this has not been disputed by the Inamdar. If the grant had been treated otherwise, Governments could not have claimed any share in the revenue of the village all these years nor could

the Inamdar have allowed Government any share therein. In the circumstances it is clear that the recital in the preamble of the Govt. Resolution of 1868 about the grant of the village of Agadgaon is a mistaken expression which can be rectified. If follows therefore that the grant in the present case is only of an Amal and not of the village.

Reading the Government order of 1868 and the R.L.A.'s opinion of 1887 together it will be clear that the R.L.A's opinion was based mainly on the statement of the Inam Commissioner as recited in the preamble of the Government Resolution of 1868 that the village of Agadgaon was granted in Inam. When that statement of the commissioner was not correct, the R.L.A.'s opinion based thereon that it was a grant of the proprietary rights in the village could bot also be quite correct. Had the true nature of the grant as decreed by the Inam Commissioner in 1858 been properly brought to the notice of the R.L.A. he would not have given such opinion in 1887.

It is true that the Government Resolution of 1887 has remained undisturbed for more than 50 years and ordinarily it would be difficult to interfere with it at this late stage But that Government Resolution was adressed to officers concerned to follow the R.L.A's opinion. A copy of it was not addressed to the Inamdar of the village, nor presumebly was the order communicated to him in any way. Since 1887 there never arose till now any occasion for Government directly or indirectly to admit the proprietary rights of the Inamdar in the village. Nor did the Inamdar assert his proprietary rights at any time. On the contrary Government has been asserting since 1906 its title to the Kuran land and has been in exculsive enjoymant of the income thereof. (See the Akarband and Tharavband). In the circumstances it appears that the Government Resolution of 1887 would not operate either as an admission or as an estoppel against Government.

It has never been acted upon. Since until there appears to be no legal objection to rescinding the Government Resolution of 1867

P.N. Moos

Sd/- 29/12/

Remembrancer of Legal Affairs.

U.R. to R.D., 10364 , dated the 20th December 1942

Ur./9/4/